punishments for the slightest cases of disobediences. Judges long contended that the allowance of amendments would put such a premium on careless pleading that the whole system of legal procedure would go to ruin. All that is being gradually discarded. Destroying verdicts as a means of disciplining inattentive or disobedient juries is on a par with shooting hostages to subdue a recalcitrant population.

The truth appears to be that we have in this rule merely a survival of the once common doctrine of reversal for technical error, coupled possibly with an inherited fear that the judges, once the representatives of the king and the privileged classes, might lose their prestige by acknowledging that a jury could ever be right when it differed from the court. But we are rapidly losing our veneration for conventionality, and we no longer canonize rules of procedure in theory even though in practice we still sometimes insist that a good result is bad because it was not produced in the orthodox way. If the courts are to merit public confidence they must think more about their duty to the people and less about themselves, more about the justice of their results and less about the regularity of their methods.

Exaggerated self-consciousness, in an institution as in an individual, is always likely to produce excessive formalism. The more fully the interests of the litigants occupy the attention of the court, the more completely will technicalities of procedure lose their power to obstruct.

E. R. S.

NEGLIGENCE — THEATERS AND SHOWS — ASSUMPTION OF RISK — SPECTATORS AT A BASEBALL GAME.—The common law right of recovery as regards one who knowingly or indifferently incurs a risk in the course of his employment not necessarily incident thereto finds expression in the cases of *Southcote* v. *Stanley,* 1 H. & N., 247: *Wilkinson* v. *Farrie,* 1 H. & C., 631: *Chapman* v. *Rothwell,* El.B. & E., 168: also COOLEY ON TORTS, (3rd Ed.) 1042-1057. Further distinctions taken on the liability of an occupier of premises are found in the case of *Indermaur* v. *Dames,* L. R. 1 C. P. 274, where the static relations between such occupiers and one injured thereon are classified. Situations involving these questions may arise under a variety of circumstances. Probably the greater number grow out of the relation of master and servant. *Sullivan* v. *New Bedford, etc., R. Co.,* 190 Mass., 288: *American Car and Foundry Co.* v *Duke,* 218 Fed. 437. In a recent decision, the Supreme Court of Washington was called upon to determine whether one who pays admission to the grand stand to see a baseball game, knowing the nature of the game and having a choice of screened or exposed seats, choosing a seat exposed to wild throws and foul balls, may show in evidence as proof of negligence, defendant's plans for the park, which called for screens to protect the area in which he sat. The court held the evidence admissible and that the plaintiff's right to recover was properly submitted to the jury who found in his favor. *Kavafian* v. *Seattle Baseball Club Association* (Wash. 1919) 177 Pac. 776.

Cases precisely in point are few. In *Wells* v. *Minneapolis Baseball and Athletic Association,* 122 Minn. 327, 142 N. W. 706, it was held that if plain-

tiff chose an unprotected seat, it was properly submitted to the jury to determine whether in so doing she had assumed any risk arising from defendant's failure to protect the area where she sat with screening. In *Crane* v. *Kansas City Baseball Exhibition Company,* 168 Mo. App. 301, 153 S. W. 1076, the court upheld a directed verdict for defendant on the theory that defendant having provided a choice of protected and unprotected seats had performed its duty and that plaintiff in choosing an exposed seat assumed the risks incident thereto. In *Edling* v. *Kansas City Baseball Exhibition Company,* 181 Mo. App. 327, 168 S. W. 908, it was held a question for the jury to decide whether or not plaintiff had been guilty of contributory negligence or had assumed the risk of being hit by a ball in taking a seat in the protected portion of the stand but in line with a defective opening in the screen. The jury decided in favor of the plaintiff. These cases all agree with and contain statements similar to the general proposition laid down in *Crane* v. *Kansas City, supra,* where the court says "We think the duty of the defendants toward their patrons included that of providing seats protected by screening from wildly thrown or foul balls for the use of patrons who desire such protection." To what extent is this necessary? In the principal case the court says concerning appellee's choice of an unprotected seat, "by inference he was invited to that seat. There was an implied representation on the part of appellant that the seat he (plaintiff) took was reasonably safe." Such doctrine would impose upon defendants the burden of protecting those seats which in the usual course of the game would be within the ordinary range of the ball. In the *Crane Case, supra,* the court said, "Defendants fully performed that duty (to provide protected seats) when they provided screened seats in the grand stand and gave plaintiff an opportunity of occupying one of those."

In *Wells* v. *Minneapolis, supra,* the court says "We believe that as to all who with full knowledge of the danger from thrown or batted balls attend a base ball game, the management cannot be held negligent when it provides a choice between a screened and an open seat, the screen being *reasonably sufficient as to extent* and substance." In *Edling* v. *Kansas City, supra,* under somewhat different circumstances the injury being due to a defective opening in the screen, the court says, "Being in the business of providing a public entertainment for profit, defendant was bound to exercise reasonable care to protect its patrons against such injuries. * * * The courts of this state have always adhered to the doctrine * * * that where one person owes a duty to another, the person for whose protection the duty exists cannot be held to have assumed the risks of injury created solely by a negligent breach of duty."

In substance, the *Crane Case* imposes a duty upon the defendants to afford a choice of protected or exposed seats and that having done so its duty is at an end. The Minnesota court in the *Wells Case* adds to this requirement that the screening must be reasonably sufficient as to extent. The *Edling Case* goes farther and refuses to exonerate defendant on the theory that the plaintiff has assumed the risk if it be shown defendant owed plaintiff a duty to protect him against the injury. A distinction should, however, be made

between the *Edling Case* and the others. In that case, defendant had recognized a duty to protect the area in which plaintiff sat but had negligently allowed the secreen to become defective. In this connection the words of Montague Smith, J. in *Crafter* v. *Metropolitan Railway Company,* L. R. 1 C. P. *304 are in point. He says, "The line must be drawn * * * between suggestions of possible precautions and evidence of actual negligence such as ought to reasonably and properly be left to a jury."

The cases all agree that defendant is not an insurer of plaintiff's safety and is therefore under no duty to screen the whole stand. They are equally well agreed that defendant is under a duty to provide some protection against the dangers of the game even as to those who attend with full knowledge of these dangers. The test applied in the *Crane Case* imposing an obligation to afford a choice of protected or exposed seats is no doubt of some value as evidence in deciding in a given case whether or not plaintiff in choosing an exposed seat assumed the risk of being hit. As a criterion for determining the extent of the area defendant is duty-bound to screen, it has no merit. On one occasion a small attendance may find ample room behind a very limited screen, while on others with a capacity audience, the defendant would be bound to screen all the seats if those attending were to have an opportunity of occupying protected seats. On the one hand, a strict application of the doctrine of assumption of risk would preclude a recovery in a majority of instances where plaintiff knew the dangers incident to the game. On the other hand, denying its applicability to such cases as these would tend to throw the entire burden on the defendant. Experience has shown that the sections of the stand directly behind the batter, and for a distance along the first and third base lines to be those exposed to the greatest danger. It is the occupants of these seats who are most apt to feel the driving effect of a pitched ball deviated from its course by glancing off the bat. In imposing an absolute duty on the baseball association to protect its patrons against this danger, the courts will have fixed the relative rights and liabilities of the parties in a manner consistent with legal theory and practical application.

A. B. T.

ENEMY ALIEN LITIGANTS IN THE ENGLISH LAW.—It is said that as a general rule an enemy alien cannot bring an action in the English courts. "And true it is, that an Alien enemie, shall maintaine neither reall nor personall action, *Donec terrae fuet' communes,* that is untill both Nations be in peace." COKE ON LITTLETON, (2 ed.) L. 2, c. 11, sec. 198. LORD STOWELL'S famous dictum in *The Hoop* (1799), 1 C. Rob. 196, 200, is regarded as a classical statement of the doctrine: "In the law of almost every country, the character of alien enemy carries with it a disability to sue, or to sustain in the language of the civilians a *persona standi in judicio.* The peculiar law of our own country applies this principle with great rigour.—The same principle is received in our courts of the law of nations; they are so far *British* courts, that no man can sue therein who is a subject of the enemy, unless under particular circumstances that *pro hâc vice* discharge him from the character of an enemy; such as his coming under a flag of truce, a cartel, a pass,